



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/CV/23/4297

Re: Property at 1/R, 3 Burnside Street, Dundee, DD2 3AS (“the Property”)

Parties:

**Mr Kevin Harris Johnston, 1 Whiteriggs Cottages, Fordoun, Laurencekirk, AB30
1NR (“the Applicant”)**

Mr John Devaney, Unknown, Unknown (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that**

- Background

This is an application for an order for payment of rent arrears alleged to be owed by the Respondent in terms of his short assured tenancy agreement with the Applicant. It called for a case management discussion (‘CMD’) at 10am on 5 August 2024, by teleconference. The Applicant was represented on the call by Ms Brechany, of TC Young, solicitors. The Respondent was not on the call and was not represented. The commencement of the CMD was delayed by 5 minutes, in case of any technical difficulty; but there remained no contact from him.

Notice of the CMD was served by advertisement placed on 9 July 2024 and therefore deemed to be carried out on 24 July 2024. The Tribunal was therefore satisfied that the matter could proceed as unopposed.

- Findings in Fact

The following facts from the application were relied on by the Tribunal, as unopposed:

1. The Respondent entered into a short assured tenancy agreement with the Applicant in respect of the Property, with an initial term of 19 November 2016 to 19 November 2016.
2. In terms of that agreement, rent of £400 was due every month.
3. There is no provision in the tenancy agreement for interest to apply to any outstanding sum.
4. The tenancy ran on after the initial term by tacit relocation, until it was terminated on 19 November 2023.
5. At the date of termination, the Respondent owed £15,450 in rent.
6. No payment has been made by the Respondent towards those arrears since.
7. This application was originally conjoined with an application for eviction; but that latter application was withdrawn when the Respondent left the Property.

- Reasons for Decision

8. The Respondent owes the sum sought in the application to the Applicant. An order for payment of that amount should therefore be made.

9. The application also included a request that interest at a rate of 8% be applied to the award, in terms of rule 41A of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017. The wording of that rule is clear that the application of interest to an order for payment is discretionary, and may or may not be linked to any rate set out in the tenancy agreement. As a fall-back position, should the Tribunal not consider the rate of 8% to be fair, the Applicant's representative suggested that a lower rate of 2-3% could perhaps be applied instead.

10. The Tribunal considered in this case that an award of interest, at any rate, was not appropriate. There is no interest rate specified in the tenancy agreement and this is not a commercial debt, where it might be expected that interest would apply to overdue payments, by operation of law. The debt in question is large; but the Respondent has already lost his home due to his inability to pay the outstanding amount, and the Tribunal considers it would be unduly punitive to apply interest to the award in those circumstances.

- Decision

Order made for payment by the Respondent to the Applicant of the sum of FIFTEEN THOUSAND, FOUR HUNDRED AND FIFTY POUNDS STERLING (£15,450).

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision

was sent to them.

Nairn Young

Legal Member/Chair

Date 5th August 2024